THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5188 of 2006

Date of Decision: 27 -10- 2006

Surinder Singh and another **.....Petitioner**

v.

Pepsu Township Development Board, Rajpura and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Avnish Mittal, Advocate
for the petitioners.

Mr.P.S.Dhaliwal, Advocate
for the respondents.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed against the order of the trial Court and the lower Appellate Court vide which both the Courts have dismissed an application for interim injunction filed by the petitioners. Both the Courts have found that Pepsu Township Development Board (hereinafter to be referred as, `the Board') had acquired certain land which was colonised and plots were carved out. The plots which have been carved out were sold by the Board in an open auction. This auction was conducted on 26.2.2004. It has further been found that the plaintiffs have filed this suit seeking to interfere with the development work of the Board by encroaching upon the land of the Board. It is in these circumstances that the application for interim injunction has been declined. The report submitted by the Local Commissioner has been rejected by both the Courts below. The relevant observations of the trial Court are as

hereunder:-

> "I have considered the arguments advanced by the counsel for the parties and come to the conclusion that there may be boundary dispute between the plaintiffs and defendants. Defendant board has already carved out the plots and this land bearing Khasra no.836/878/9 measuring 1 kanals 8 marlas. Possession has been delivered to various persons of the plots. Report of L/C cannot be relied upon at this stage because the relevant document i.e. akas latha, musavi, field book are not available. The L/C conducted the demarcation of the land of the plaintiffs. No burji Thadda was available nor located by the Naib Tehsildar before the demarcation of the land. As per his report he started demarcation from Khasra no.6 at the instance of owner of the land and gave his report. As there is no authentic thadda burji was available at the spot for demarcation of land. Even the field book, akas latha of the land in dispute is not available, therefore, in my opinion the authenticity of the demarcation report conducted by the Naib Tehsildar is doubtful. P.T.D.B. Has already sold plots to different persons through open auction. In my opinion the plaintiffs by filing the suit want to interfere into the development work of the P.T.D.B. and want to encroach upon the land of the defendants. Therefore, no prima facie case is made out in favour of the plaintiffs, nor balance of convenience lie in their favour and they will not suffer any irreparable loss or injury if injunction is not granted. Hence stay application is dismissed. However, this order has no effect on the merits of the main case."

These findings have been affirmed by the lower Appellate Court. The relevant observations of the lower Appellate Court are as hereunder:-

> "Ld. trial court has rightly held that the board has already carved out the plots, out of land bearing khasra No.836/878/9 measuring 1 kanal 8 marlas and the possession of these plots have been delivered to various persons. Trial Court has rightly reached at conclusion that prima facie the report of local commissioner cannot be relied upon at this stage, as the demarcation has been conducted in the absence of material documents like aksh latha, musavi etc. The trial court has rightly held that the defendant board has already sold the plots to different persons, through open auction and the plaintiff wants to interfere into the development work of the PTDB by encroachment upon the land of the defendants and as such the application under Order 39 rules 1 and 2 has been rightly declined by the lower court. The order, under appeal is legal and valid order and does not call for any interference."

Learned counsel for the petitioners has contended that in fact the Board has carved out the plots on land belonging to the petitioners. In support of this contention he has drawn my attention to the written statement filed by the respondent-Board to the amended plaint. A reading of paras 2 and 3 of the written statement, however, does not support the contention of the learned counsel. Para 2 and relevant part of para 3 of the written statement are as hereunder:-

> "2. That Para No.2 of the plaint is correct to the extent that the answering defendant is owner in possession of the land comprising in Khasra No.836/781/9 measuring 1-8. Rest of the contents of this para are wrong and denied. The answering defendant is not assured regarding the shape of land of Tatima. The answering defendant has acquired the said Khasra Number alongwith other land and has carved out a colony in the name of Shaheed Bhagat Singh Colony, Rajpura by passing resolution and ha sold some plots to some

persons and some plots remain to be sold. Earlier plots No.186 to 193 could not be sold.

3. That Para No.3 of the plaint is wrong and denied. The answering defendant has not included the land of the plaintiff in its plots. However, the answering defendant has already sold the plots out of that land with which the plaintiff has got no concern. The plots No.186 to 193 were owned and possessed by answering defendant which have already been sold by the answering defendant in open auction on 26-2-2004. In fact the plaintiff has filed the present suit with malafide intention to stop the development work of the answering defendant. It is pertinent to mention here that the answering defendant has already sold some land owned and possessed by the answering Board in between plots No.187 and 188 to M/s Guru Nanak General Rice Mills, Rajpura on 3-9-1975 measuring 105' x 20' and at present the said land is being used in the shape of road. ....."

A reading of the aforesaid facts clearly shows that the Board had colonised the land acquired by it. The plots were sold by way of open auction on 26.2.2004. It is the stand of the Board that the suit has been filed with mala fide intention to stop the development work of the Board.

I find no error in the view taken by the Courts below warranting interference in the exercise of jurisdiction by way of this revision petition. Prima facie there is sufficient evidence on record to show that the plots were carved out on the land belonging to the Board and were sold in an open auction as far back as in February, 2004 prior to the filing of the present suit. It may be noticed here that initially the suit was filed with a prayer for grant of permanent injunction restraining the Board from auctioning the plots. When the Board filed the written statement in that suit, the plaintiffs filed an application for amendment of the plaint

with a prayer that the respondents should be restrained from carrying out any development work. This also shows that auction had already taken place much prior to the filing of the present suit. It is, however, observed that any construction raised by the defendants on the plots in question would be subject to final determination of the trial Court.

With the aforementioned observations, the present revision petition is dismissed.

(P.S.PATWALIA)
JUDGE

October 27, 2006.

RC